

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	CASE NO. 2:06-cr-012-MEF
)	
TERRENCE CORNELIUS)	
DEMETRIUS J. HAWKINS)	

ORDER

On October 2, 2006, Defendant Cornelius filed a Motion for Continuance (Doc. # 133). While the granting of a continuance is left to the sound discretion of the trial judge, *United States v. Warren*, 772 F.2d 827, 837 (11th Cir. 1985), a court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Speedy Trial Act ("the Act") provides generally that the trial of a defendant in a criminal case shall commence within 70 days of the latter of the filing date of the indictment or the date the defendant appeared before a judicial officer in such matter. 18 U.S.C. §3161(c)(1); *see United States v. Vasser*, 916 F.2d 624 (11th Cir. 1990).

A defendant may not waive his or her rights under the Act because "the Act demands that defense continuance requests fit within one of the specific exclusions set out in subsection (h)." *See Zedner v. United States*, 126 S. Ct. 1976, 1985 (2006). Among other exclusions in subsection (h), the Act excludes from the statutory period any continuance that the judge grants "on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C.

§ 3161(h)(8)(A).

The Motion for Continuance (Doc. # 133) states that Howard Greenberg, counsel for Defendant Cornelius, has conflicts in other jurisdictions preventing him from effectively preparing for the retrial of this case in the scheduled criminal trial term. This case was tried before a jury September 25 - 28, 2006 and resulted in a Mistrial. The motion notes that Defendant Hawkins, who is represented by counsel other than Mr. Greenberg, also seeks a continuance even though Defendant Hawkins failed to file a motion indicating as such. This Court concludes that a continuance of this case is warranted and that the ends of justice served by continuing this case outweigh the best interest of the public and the defendant in a speedy trial. *See United States v. Davenport*, 935 F.2d 1223, 1235 (11th Cir. 1991) (reasonable time necessary for effective preparation is a significant factor for granting a continuance under the Speedy Trial Act).

Accordingly, it is hereby ORDERED as follows:

1. The Motion for Continuance (Doc. # 133) is GRANTED.
2. The trial of Defendants Cornelius and Hawkins is continued from the October 24, 2006 criminal trial term to the November 27, 2006 criminal trial term.

DONE this the 16th day of October, 2006.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE